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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,423	03/24/2004	Ted Guidotti	018798-223	3507
21839	7590	11/01/2005	EXAMINER	
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			CRAIG, PAULA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/807,423

Applicant(s)

GUIDOTTI ET AL.

Examiner

Paula L. Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/24/04 & 9/27/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 116, 313 (see specification, paragraphs 34 and 37). The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference characters not mentioned in the description: 109, 306 (see Figs. 1 and 3). In addition, please note the attached Form PTO-948. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 6-8 set forth the physical characteristics desired rather than the specific composition of the article. Therefore, relying on *Ex parte Slob*, 157 USPQ 172 (BPAI 1967), such claims could cover any conceivable combination of materials whether presently existing or which might be discovered in the future and which would impart the desired characteristic. One skilled in the art would not be able to find specific materials with the recited properties without undue experimentation.

5. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the planar extension" in lines 8-9; it is not clear which planar extension is being referred to. Claim 9 recites the limitation "the wetting area". Claims 10 and 11 recite the limitation "the amount of superabsorbent material". There is insufficient antecedent basis for these limitations in the claims. Regarding Claim 12, the phrase "or the like" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or

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the like"), thereby rendering the scope of the Claim unascertainable. See MPEP

§ 2173.05(d). Claims 2-12 are rejected as dependent on Claim 1.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-5, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,203,654 to McFall et al. in view of U.S. Patent No. 4,394,930 to Korpman.

9. For Claim 1, McFall teaches an absorbent article having a liquid-permeable upper surface (Figs. 15-16A and col. 26, lines 53-58). The article has an absorbent structure exhibiting a planar extension (Figs. 15-16A and col. 26, lines 53-58). The absorbent structure has an acquisition layer (macro-particulate structure 1570, Figs. 15-16A and col. 27, lines 32-36). The absorbent structure has a storage layer (absorbent

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core 1528, Figs. 15-16A and col. 26, lines 52-57). The acquisition layer has a plurality of fragments of a liquid-absorbing, open-celled foam material (particles 1572, Figs. 15-16A and col. 27, lines 32-54). Each fragment exhibits a planar extension having a transversal direction and a longitudinal direction (Fig. 15; also see Figs. 10-11A and 18). Each fragment has a thickness direction extending perpendicularly to the planar extension (Figs. 16 and 16A; also see Figs. 10-11A and 18). McFall teaches the width in the transversal direction on each fragment in a dry condition not exceeding 10 millimeters (Figs. 15-16A, col. 12, lines 7-17, col. 14, lines 1-21, and col. 15, line 65 to col. 16, line 16). McFall shows the total area of the fragments in dry condition in the planar extension being lower than the area of the absorbent structure in the planar extension (Figs. 15-16A). McFall also teaches the use of superabsorbent polymers in the fragments (col. 27, lines 45-54).

10. McFall does **not** expressly teach the foam material being polyacrylate-based. However, absorbent polyacrylate-based foam is known in the art of absorbent articles. Korpman confirms this and teaches a polyacrylate-based foam (col. 1, lines 1-6 and 21-26, col. 2, lines 36-40 and 58-60, col. 4, lines 51-68, Table A, and col. 7, lines 57-68). Korpman teaches that the polyacrylate foams are advantageous in that they are easily prepared and have an extremely high capacity for absorbing aqueous fluids (col. 1, lines 34-48). Korpman teaches that the polyacrylate foams provide comfort in absorbent articles while reducing thickness (col. 2, lines 4-12). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify the

absorbent article of McFall to include a polyacrylate-based foam as taught by Korpman, to provide for comfort and high absorbing capacity without thickness.

11. For Claims 2 and 3, McFall/Korpman teach the length of each fragment in the transversal and longitudinal directions not exceeding 7 and 20 millimeters respectively (McFall, Figs. 15-16A, col. 12, lines 7-17, col. 14, lines 1-21).

12. For Claims 4 and 5, McFall/Korpman teach the total area of the fragments in the planar extension maximally being 50% or 30% of the total area of the absorbent structure in the planar extension (McFall, Fig. 4 and col. 19, lines 47-65; also see col. 20, lines 33-45).

13. For Claim 9, McFall/Korpman teach the fragments being applied against the upper surface of the storage layer in the wetting area. See McFall, Figs. 16 and 16A.

14. For Claim 12, McFall/Korpman teach the absorbent article being a diaper (Fig. 15 and col. 26, lines 53-55).

15. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFall in view of Korpman as described above, and further in view of U.S. Patent No. 4,500,315 to Pieniak.

16. For Claims 10 and 11, McFall/Korpman teach all the limitations of Claim 1, as stated above in paragraph 10. McFall/Korpman teach a storage layer as described above for Claim 1 in paragraph 9, and also teach cellulosic fibers and superabsorbent (McFall, col. 1, lines 23-36, col. 27, lines 44-54). McFall/Korpman do not expressly teach cellulosic fibers and particulate superabsorbent being located in the storage layer.

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However, storage layers including cellulosic fibers and particulate superabsorbent are well known in the art of absorbent articles. Pieniak '315 confirms this and teaches a storage layer having cellulosic fibers and particulate superabsorbent (absorbing layer 12, Figs. 2 and 3, col. 4, lines 50-54, col. 5, lines 25-49, col. 6, lines 40-43). The amount of superabsorbent material calculated on the total weight of the storage layer in dry condition is at least 50 percent or at least 70 percent by weight (Pieniak '315, col. 8, lines 36-38 and 56-62). A ratio of 400-1200 percent is described as preferred in Pieniak (col. 8, lines 65-62). The storage layer of Pieniak is indicated as providing for an exceptionally thin absorbent article (col. 5, lines 37-39). It would have been obvious to one skilled in the art at the time of the invention to modify the absorbent article of McFall/Korpman to include cellulosic fibers and particulate superabsorbent located in the storage layer, with the amount of superabsorbent material being at least 50% or 70% of the total weight of the storage layer, as taught by Pieniak. Doing so would provide for an exceptionally thin absorbent article.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 4,239,043 to Gellert and 4,664,662 to Webster show cut foam blocks. U.S. Patent Nos. 6,103,358 to Bruggemann et al., 6,657,101 to Malmgren et al. and PCT Application Publication No. WO 01/15649 A1 to Abbas show polyacrylate foam. U.S. Patent No. 5,713,881 to Rezai et al. shows integrally joined



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foam fragments. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig  
Examiner  
Art Unit 3761

PLC

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER  
